U.S. Department of Justice

Immigration and Naturalization Service

C

OFFICE OF ADMINISTRATIVE APPEALS
425 Eye Street N.W.
ULLB, 3rd Floor
Washington, D.C. 20536

[redacted]

Public Copy

FILE: [redacted] Office: Detroit Date: APR 26 2000

IN RE: Applicant: [redacted]

APPLICATION: Application for Permanent Residence Pursuant to Section 1 of the Cuban Adjustment Act of November 2, 1966 (P.L. 89-732)

IN BEHALF OF APPLICANT: Self-represented

Identifying ... prevent clearly unwarranted invasion of personal privacy

INSTRUCTIONS:

This is the decision in your case. All documents have been returned to the office which originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. 103.5(a)(1)(i).

If you have new or additional information which you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Service where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. Id.

Any motion must be filed with the office which originally decided your case along with a fee of $110 as required under 8 C.F.R. 103.7.

FOR THE ASSOCIATE COMMISSIONER,
EXAMINATIONS

Terrance M. O'Reilly, Director
Administrative Appeals Office

DISCUSSION: The application was denied by the District Director, Detroit, Michigan, who certified his decision to the Associate Commissioner, Examinations, for review. The district director's decision was withdrawn and the case was remanded for further action. The district director has again denied the application and certified his decision to the Associate Commissioner for Examinations for review. The district director's decision will be affirmed.

The applicant is a native and citizen of Cuba who filed this application for adjustment of status to that of a lawful permanent resident under section 1 of the Cuban Adjustment Act of November 2, 1966. This Act provides for the adjustment of status of any alien who is a native or citizen of Cuba and who has been inspected and admitted or paroled into the United States subsequent to January 1, 1959, and has been physically present in the United States for at least one year, to that of an alien lawfully admitted for permanent residence if the alien is eligible to receive an immigrant visa and is admissible to the United States for permanent residence.

Referring to sections 212(a)(2)(A)(i)(II) and 212(a)(2)(C) of the Immigration and Nationality Act (the Act), 8 U.S.C. 1182(a)(2)(A)(i)(II) and 1182(a)(2)(C), the district director determined that the applicant is inadmissible to the United States in view of his conviction for drug trafficking. He also noted that the applicant had failed to submit the final court dispositions of his arrests as had been requested and denied the application for lack of prosecution.

The applicant has provided no statement or additional evidence on notice of certification.

Section 212(a)(2) of the Act provides that aliens inadmissible and ineligible to receive visas and ineligible to be admitted to the United States include:

> (A)(i) Any alien convicted of, or who admits having committed, or who admits committing acts which constitute the essential elements of --
>
> (I) a crime involving moral turpitude (other than a purely political offense) or an attempt or conspiracy to commit such a crime, or
>
> (II) a violation of (or a conspiracy or attempt to violate) any law or regulation of a State, the United States, or a foreign country relating to a controlled substance (as defined in section 102 of the Controlled Substances Act, 21 U.S.C. 802).
>
> (C) Any alien who the consular officer or immigration officer knows or has reason to believe is or has been an illicit trafficker in any such controlled substance or is or has been a knowing assister, abettor, conspirator, or

colluder with others in the illicit trafficking in any such controlled substance, is inadmissible.

The district director originally denied the application for adjustment of status on July 12, 1996, after determining that the applicant was inadmissible to the United States pursuant to section 212(a)(2)(A)(i)(II) of the Act based on his conviction of trafficking in a controlled substance.

Because the record of proceeding did not contain the final court disposition of the applicant's arrest, nor was there evidence that the applicant was requested to submit final disposition of all his arrests, on June 24, 1997, the Associate Commissioner remanded the case to the district director in order that he may accord the applicant the opportunity to submit additional documents.

On December 30, 1997, the applicant was requested to appear at the Service office for an interview regarding his application for permanent residence on January 26, 1998. He was advised to bring with him the court disposition of his 1986 arrest for kidnapping and 1987 arrest for possession of marijuana. The applicant failed to appear as requested. On October 28, 1999, another request was forwarded to the applicant to submit the court disposition of his arrests. The applicant failed to respond.

A conviction of a crime involving moral turpitude may render the applicant inadmissible to the United States pursuant to section 212(a)(2)(A)(i)(I) of the Act. Likewise, a conviction of possession and trafficking of a controlled substance may render the applicant inadmissible pursuant to sections 212(a)(2)(A)(i)(II) and 212(a)(2)(C) of the Act. The record of proceeding, however, does not contain the court record of all arrests as had been requested by the district director. Such documents are necessary before a determination is made on the inadmissibility of the applicant.

However, the applicant has failed to submit the final court disposition of all his arrests as had been requested by the district director. Again, on notice of certification he was offered an opportunity to submit evidence in opposition to the district director's findings. No evidence, however, has been entered into the record of proceeding.

The applicant is, therefore, ineligible for adjustment of status to permanent resident pursuant to section 1 of the Act of November 2, 1966. The decision of the district director to deny the application will be affirmed.

ORDER: The district director's decision is affirmed.